

Park Meadows Country Club and its workers' compensation insurance carrier, Royal and Sun Alliance (referred to jointly as "Park Meadows") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's award of benefits to T. R. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Mr. R. suffered a herniated disc while working for Park Meadows on August 4, 2000. On February 1, 2001, Mr. R. filed an application with the Commission to compel Park Meadows to pay medical expenses and disability compensation associated with the injury. Judge La Jeunesse held an evidentiary hearing on Mr. R.' claim on November 2, 2002, and then referred certain medical questions to Dr. Holmes. After receiving Dr. Holmes' report on August 21, 2003, and Mr. R.' objection to that report on September 8, 2003, Judge La Jeunesse issued his decision on February 2, 2004. In general, Judge La Jeunesse ordered Park Meadows to pay Mr. R.' medical expenses and temporary disability compensation, but deferred resolution on Mr. R.' claim for permanent partial disability compensation.

Park Meadows asks the Appeals Board to review Judge La Jeunesse's decision on the grounds that: 1) Mr. R.' claim to temporary disability compensation is not supported by the medical evidence; 2) temporary disability compensation cannot be awarded because Mr. R.' work-related injury did not compel him to engage in different employment; and 3) Mr. R.' claim for permanent partial disability compensation should not be deferred, but should be adjudicated now on the basis of evidence already submitted.

FINDINGS OF FACT

The parties do not challenge Judge La Jeunesse's findings of fact. The Appeals Board summarizes Judge La Jeunesse's findings relevant to Park Meadow's motion for review as follows.

Mr. R. began work for Park Meadows on June 10, 2000, as either a wine steward or a bar tender. On August 4, 2000, Mr. R. attempted to open the rear gate of a delivery truck. He felt pain in his neck and arms. He continued working with pain for several days. He then sought medical attention, was diagnosed with a herniated C6-7 disc, and was restricted from performing work that required repetitive neck motion, lifting more than 20 pounds, or lifting above shoulder level. Park Meadows laid Mr. R. off on September 2, 2000.

DISCUSSION AND CONCLUSIONS OF LAW

Park Meadows concedes that Mr. R. suffered a herniated C6-7 disc in a work-related accident on August 4, 2000. Mr. R.' injury therefore satisfies § 34A-2-401's threshold requirements for coverage under the Act. However, Park Meadows argues that Mr. R.' circumstances do not

qualify him for an award of temporary disability compensation under § 34A-2-410 and § 34A-2-411 of the Act.

Section 410 provides that “(i)n cases of temporary disability, so long as the disability is total, the employee shall receive (temporary total disability compensation)” The Utah Supreme Court’s decision in Entwistle v. Wilkins, 626 P.2d 495, 498 (Utah 1981), explained the requirements of §410 as follows (emphasis added):

... “[T]otal disability” does not mean a state of abject helplessness or that the injured employee must be unable to do any work at all. The fact that an injured employee may be able to do some kinds of tasks to earn occasional wages does not necessarily preclude a finding of total disability to perform the work or follow the occupation in which he was injured. **His temporary disability may be found to be total if he can no longer perform the duties of the character required in his occupation prior to his injury.**

Whether Mr. R. was able, after his injury, to perform the duties of his work for Park Meadows has not been addressed in these proceedings. While Dr. Goldston’s opinion establishes Mr. R.’ physical limitations resulting from his injury, Judge La Jeunesse has not determined what duties were required by Mr. Reynold’s work as a wine steward/bar tender at Park Meadows. Without that information, the Appeals Board is unable to determine whether Mr. R. was entitled to temporary disability compensation.

The Appeals Board remands this matter to Judge La Jeunesse to conduct additional evidentiary proceedings on Mr. R.’ claim. Judge La Jeunesse will then issue a new decision addressing the regular duties of Mr. R.’ work at Park Meadows and whether an award of permanent partial disability is appropriate, as well as any other issues Judge La Jeunesse deems appropriate. Any party dissatisfied with Judge La Jeunesse’s decision may then seek further review by the Commission or Appeals Board.

ORDER

The Appeals Board grants Park Meadows’ motion for review and remands this matter to Judge La Jeunesse for further proceedings consistent with this decision. It is so ordered.

Dated this 29th day of June, 2004.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch